IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 536 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GAUTAMBHAI BABABHAI ALIAS SHANTIBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SUDHANSHU S PATEL for Applicant(s) : 1,
MR.LB DABHI APP for Respondent(s) : 1,
MR RAJESH R DEWAL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 22/10/2007

ORAL JUDGMENT

1. The petitioner has invoked the provisions of Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, “the Code”) for the relief of deletion of the condition contained in

order dated 24.08.2007 of Presiding Officer, F.T.C. No.1, Gandhinagar subject to which the petitioner was released on bail after staying operation of order of the trial court by which the petitioner was convicted. The petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to simple imprisonment for six months and fine of Rs.3,000/- with an additional order to pay Rs.7,50,000/- by way of compensation under Section 357 of the Code. Being aggrieved by the conviction and sentence, the petitioner has filed Criminal Appeal No.48 of 2007, which is admitted and order impugned therein is stayed as aforesaid. It is recorded in the impugned order that the petitioner has deposited fine of Rs.3,000/- and there was no doubt about his availability. However, in view of the dispute and the documents and having regard to the amounts of cheques totalling to Rs.7,50,000/- the Court ordered the petitioner to deposit in the Court Rs.1,50,000/- as one of the conditions for the grant of bail pending appeal.

2. It was submitted by learned counsel Mr. Sudhanshu S. Patel, appearing for the petitioner that the order of conviction and sentence was unsustainable in law in so far as the cheques in question were not signed by the petitioner and

were not drawn upon the account maintained by the petitioner. On that basis, he submitted that the onerous condition of depositing Rs.1,50,000/- in spite of the order of stay by the Appellate Court was perverse, illegal and amounted to denying bail while granting it. According to the statement made on oath in the petition, the petitioner was dependant upon his son for whom it would not be possible to deposit the aforesaid amount out of his very limited resources. Learned counsel relied upon the judgment of Hon'ble Supreme Court in **Sivasuriyan V/s. Thangavelu [(2004)13 SCC 795]** to point out that the power under Sub-Section (3) of Section 357 could not have been exercised by the trial court after having sentenced the petitioner to imprisonment as also fine.

3. Even as the respondent, original complainant, has not filed any affidavit to controvert any of the averments made in the petition, learned counsel Mr.Deval appearing for him submitted that the impugned order was made in judicious exercise of discretion vested in the Appellate Court and it required no interference by this Court. He relied upon judgment of the Supreme Court in **Dilip S. Dahanukar V/s. Kotak Mahindra Co.Ltd. and another [(2007)6 SCC 528]**, wherein it is held in paragraph No.69 that

conditions for suspending the sentence should also be reasonable. It is further held in paragraph No.72 of that judgment that the appellate court, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right.

4. Having regard to the above facts and submissions, it is clear that condition of depositing Rs.1,50,000/- has no reasonable basis except that the cheques in question were of the amount of Rs.7,50,000/-. In the peculiar facts and circumstances, when the order impugned before the Appellate Court was stayed and the petitioner was ordered to be released on bail, the condition of depositing Rs.1,50,000/- in the Court was obviously unjustified and could amount to denial of bail in the peculiar facts of the case. If the bail were denied or cancelled on account of the petitioner being unable to fulfill that condition he would undergo the whole period of sentence before his appeal could be heard. Therefore, it is a clear case of failure of justice calling for intervention by this Court.

5. In the facts and for the reasons recorded hereinabove, petition is allowed and the impugned

condition No.4 in order dated 24.08.2007 of Presiding Officer, F.T.C. No.1, Gandhinagar in Criminal Appeal No.48 of 2007 below application Exh.4 is set aside. The amount of Rs.5,000/- ordered to be deposited in this Court at the time of admission of the petition shall be transferred to the aforesaid Appellate Court and shall remain deposited in that Court till hearing and final disposal of the appeal of the petitioner and the Appellate Court may pass appropriate orders for its disbursement to either party in view of the decision in appeal. Rule is made absolute accordingly. Direct service is permitted.

(D.H.WAGHELA, J.)

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